

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Susan Neese, M.D; James Hurly,
M.D.; and Jeffrey Barke, M.D., on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

Xavier Becerra, in his official capacity as
Secretary of Health and Human
Services; United States of America,

Defendants.

Case No. 2:21-cv-00163-Z

NOTICE OF SUPPLEMENTAL AUTHORITY

The plaintiffs respectfully advise the Court of the Northern District of Texas's recent decision in *Texas v. EEOC*, No. 2:21-CV-194-Z (N.D. Tex.) (attached as Exhibit 1).

Texas v. EEOC holds that Title VII, as interpreted in *Bostock*, prohibits employers from discriminating on account of homosexual or transgender *status*—but that *Bostock* does not in any way restrict an employer's prerogative to govern the *conduct* of his employees or to discriminate in response that conduct. *See Texas v. EEOC*, No. 2:21-CV-194-Z (N.D. Tex.), slip op. at 5–14. The holding of *Texas v. EEOC* is consistent with the plaintiffs' stance that section 1557's prohibition on "sex" discrimination allows medical providers to decline to provide so-called gender-affirming care to patients, so long as the provider would have responded in the same way to an identical request from a member of the opposite biological sex. The holding of *Texas v. EEOC* is also incompatible with the Secretary's insistence that *all* acts of discrimination on account of sexual orientation or gender identify qualify as "sex" discrimination under *Bostock*.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on October 8, 2022, I served this document through CM/ECF upon:

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